

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DUSTIN SWANDA,

CIVIL NO. 10-970 (MJD/JSM)

Plaintiff

REPORT AND RECOMMENDATION

MINNESOTA STATE PATROL,
SARAH LEWIS, MINNESOTA
DEPARTMENT OF PUBLIC SAFETY,
BRYAN BEARCE, RAMSEY COUNTY,
RAMSEY COUNTY ATTORNEY'S OFFICE,
and JOHN CHOI,

Defendants.

The above matter came before the undersigned upon defendants Minnesota Department of Public Safety, the Minnesota State Patrol and State Trooper Bryan Bearce's (the "State defendants") Motion to Dismiss or in the Alternative for Summary Judgment [Docket No. 77]. This matter has been referred to the undersigned Magistrate Judge for a Report and Recommendation by the District Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(c).

I. BACKGROUND

The factual background of plaintiffs' lawsuit was described in detail in a Report and Recommendation issued on August 3, 2012, which recommended the dismissal of plaintiffs' claims against Ramsey County Attorney John Choi, Ramsey County, the Ramsey County Attorney's Office and Ramsey County employee Sarah Lewis. [Docket No. 93].

On July 20, 2012, while the State defendants' dispositive motion was pending, plaintiff Dustin Swanda filed a letter with the Court stating that the case had been settled

by agreement between plaintiffs and the State defendants [Docket No. 90]. An identical letter signed by plaintiff Malonnie Swanda-Morrison was filed on July 24, 2012 [Docket No. 91]. In light of these notifications, plaintiffs and the State defendants were directed to file a Stipulation of Dismissal with the Clerk of Court and Chief Judge Michael J. Davis by August 3, 2012, disposing of this matter [Docket No. 92]. The State defendants did not file the Stipulation of Dismissal as directed, although counsel for the State defendants informed the Court on August 6, 2012, that plaintiff Malonnie Swanda-Morrison had signed a settlement agreement and the settlement agreement had been forwarded to plaintiff Dustin Swanda for his signature. Dustin Swanda is incarcerated in California.

In light of plaintiffs' representations regarding settlement with the State defendants and the State defendants' representations regarding the status of settlement, the Court recommends as follows:

II. RECOMMENDATION

1. The State defendants' Motion to Dismiss or in the Alternative for Summary Judgment [Docket No. 77] be **DENIED AS MOOT**.

2. If the plaintiffs and State defendants do not complete their settlement and a Stipulation of Dismissal is not filed, the State defendants be allowed renew their dispositive motion.

Dated: August 8, 2012

Janie S. Mayeron
JANIE S. MAYERON
United States Magistrate Judge

NOTICE

Under D. Minn. LR 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **August 22, 2012**, a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. A party may respond to the objecting party's brief within fourteen days after service thereof. A judge shall make a de novo determination of those portions to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Court of Appeals.